



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: General Security Services Corporation

File: B-280959; B-280959.4

Date: December 11, 1998

James A. Hughes, Esq., Robert S. Brams, Esq., William E. Slade, Esq., and Rodney A. Grandon, Esq., Patton Boggs, for the protester.

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., Douglas & Barnhill, for Akal Security, Inc., an intervenor.

Joni M. Gibson, Esq., U.S. Marshals Service, for the agency.

Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly normalized pricing element of solicitation (wages of court security officers) where agency reasonably determined that security needs precluded permitting offerors to propose wages below the wages currently being paid to such personnel.

DECISION

General Security Services Corporation (GSSC) protests the terms of request for proposals (RFP) No. MS-98-R-0008, issued by the U.S. Marshals Service (USMS), Department of Justice, for court security services at eight Federal Circuits. GSSC principally argues that the RFP's price evaluation scheme unduly restricts competition.

We deny the protest.

The RFP, issued on June 22, 1998, contemplates multiple awards (one award for each Federal Circuit) of indefinite-quantity, indefinite-delivery and time-and-material type contracts, with fixed unit prices. RFP § L-6. The RFP states that award will be made to that offeror whose proposal, conforming to the solicitation, is determined to provide the best value to the government, cost/price, technical, and past performance considered. RFP § M-1. The RFP states that technical considerations are more important than price and that past performance is less important than technical or price considerations. RFP §§ M-5, M-6.

On July 24, the agency issued amendment No. A003, the subject of this protest, which provides, in section B, as follows:

Court security is important to the mission of the USMS. In order to ensure a stable and experienced workforce, the prospective contractor shall, at a minimum, maintain the wages and benefits currently paid to the incumbent Site Supervisors, Lead Court Security Officers [LCSO] and Court Security Officers [CSO] in the Court Security Program. For evaluation purposes only, offerors shall propose Site Supervisor, LCSO and CSO rates using the applicable Wage Determination rate plus \$3.00 for Site Supervisors, \$2.00 for LCSOs and \$1.00 for CSOs or the applicable Collective Bargaining Agreement (CBA) rate. CBAs are applicable to this solicitation. The USMS intends to amend the solicitation at a later time to incorporate the CBAs once the Department of Labor [DOL] has reviewed them. Offerors shall propose the applicable CBA rate and where there is no CBA rate, the applicable Wage Determination rate plus the USMS cost adjustment as indicated above.¹

The RFP further states, in section M-7, that after award the agency will adjust, upward or downward, the total burdened rate for site supervisors, LSCOs and CSOs to reflect actual current wages for incumbent personnel; that rates for new or replacement CSOs shall be paid at the wage determination rate; and that rates for new or replacement LSCOs and site supervisors shall be negotiated during contract performance.

USMS states that these provisions are necessary because, in the past, recompetition of court security services has resulted, in some cases, in lower compensation, including salaries and fringe benefits, being paid to CSOs. For example, in response to the Second Judicial Circuit solicitation issued last year, offerors proposed wages lower than those paid by the incumbent contractor (the incumbent's wages were higher than the applicable wage rate). Low morale and labor unrest followed. There were numerous threats of strikes by CSOs and complaints to federal judges who, in turn, complained to the USMS and to Congress. According to the agency, "reductions [of wages and fringe benefits from incumbent levels] can be detrimental in obtaining the quality of services needed for adequate contract performance and thus, jeopardizes the safety of the federal judges and court

¹The RFP required offerors to break down their rates to show their overhead, general and administrative costs, and profits, which were specific to each offeror; the remaining direct labor rates were to be normalized by the agency based on the applicable wage determination, health and welfare costs, and the cost adjustment of the evaluation scheme. RFP § M-7.

personnel." Contracting Officer's (CO) Statement of Fact, Oct. 5, 1998, at 2. Thus, the wage rate restriction was imposed to maintain incumbent wages and benefits.

The protester argues that the cost adjustment provision in amendment No. A003 (and a similar provision added by amendment No. A010) is unnecessarily restrictive, and generates fictional rather than actual prices, contrary to the requirement that price/cost be evaluated in every source selection. See Federal Acquisition Regulation (FAR) § 15.304(c)(1). According to the protester, by incorporating this provision, the agency improperly has restricted an "offeror's ability to propose wages below the artificial wages imposed by Amendment A003, which would enhance price competition and save the Government money." Protester's Comments, Oct. 15, 1998, at 4. GSSC further argues that the wage rates upon which offerors are to be evaluated "simply do not reflect reality, and are therefore not a valid means . . . upon which to base contract award." Id. According to the protester, even assuming that the need identified by the USMS to limit labor unrest and low morale of court security personnel caused by reduced wages is legitimate, the cost adjustment scheme still is unreasonable because less restrictive methods are available, such as "setting some minimum wage and benefit rate, higher than the DOL wage determination, that USMS actually intends to apply after award," instead of employing "artificial wage and benefit rates." Id. at 5.

The Competition in Contracting Act of 1984 (CICA) provides that, in order to ensure full and open competition, solicitations may contain restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency. 41 U.S.C. § 253a(a)(2)(B) (1994). It follows that agencies may impose conditions and limitations on how offerors may price items or services where the needs of the agency reasonably require such provisions or conditions. See Courtney Contracting Corp., B-242945, June 24, 1991, 91-1 CPD ¶ 593 at 5-6.

The agency has established that the pricing methodology employed here is reasonably necessary to meet its needs. The record supports the agency's conclusion that a stable workforce, without the disruption a wage reduction for certain personnel may cause, is a necessary requirement. The contract concerns human safety and, as stated above, where a successful offeror in the past proposed wages lower than those paid by the incumbent contractor, low morale and labor unrest among court security personnel followed, with threats of strikes and numerous complaints. Thus, the agency could reasonably seek to ensure that these disruptions do not occur again. Specifying minimum wages for evaluation purposes seems a reasonable means to achieve this end under the circumstances; this approach clearly will eliminate the direct cause of prior labor difficulties, i.e., reduced wages. Most significantly, it will preclude the most experienced officers from having their wage rates lowered.

We also find nothing objectionable in the agency's use of estimated wages in its methodology. The agency's reliance on estimated rather than actual wage rates for evaluation purposes results from its lack of information on the salaries of the current CSOs, many or most of which are above the applicable DOL wage rate determination. The agency states that it attempted to obtain incumbent CSO wages and benefits in six Circuits (comprising approximately 2,000 CSOs), but that GSSC, the incumbent, refused to release this information to the agency. USMS then tried to survey CSOs, only to find that the information provided was often inaccurate and incomplete. In addition, at some locations, CSOs are refusing to provide wage and fringe benefit information to prospective offerors or providing conflicting wage and benefit information, thus auctioning their services to the highest bidder. Under these circumstances, the use of estimated rates is a reasonable means of expressing the wage rates to be included in offerors' pricing proposals.² Finally, concerning the protester's argument that establishing fixed wages precludes the agency from considering cost, the record shows that each offeror's overhead, general and administrative costs, and profit will be evaluated. As these pricing elements are specific to each offeror, they provide a basis for discriminating among offerors based on cost to the government.

We note that the agency's pricing methodology essentially is a normalization of cost with respect to a specific price factor. Normalization, generally applicable to cost-reimbursement contracts, involves the measurement of at least two offerors against the same cost standard or baseline in circumstances where there is no logical basis for differences in approach (or in situations where insufficient information is provided with proposals, leading to the establishment of common "should have bid" estimates by the agency). See Moshman Assocs., Inc., B-192008, Jan. 16, 1979, 79-1 CPD ¶ 23 at 10, citing and quoting Dynalectron Corp., B-181738, Jan. 15, 1975, 75-1 CPD ¶ 17, aff'd, June 5, 1975, 75-1 CPD ¶ 341. Normalization is warranted here, given the agency's need for wage stability, and the resulting absence of any logical basis for differences in pricing CSO wages.

The protest is denied.

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²We also agree with the agency, contrary to the protester's argument, that the wage rate restriction here does not violate the Service Contract Act (SCA) of 1965, as amended, 41 U.S.C. §§ 351-58 (1994). The SCA only states, essentially, that agencies must ensure that contractors pay no less than the required locality wage determination rate to listed employees; here, the agency is requiring offerors to pay more than the SCA wage rate, which is not inconsistent with the SCA.